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## OLR Bill Analysis

sHB 6662 (as amended by House "A")\*

### ***AN ACT CONCERNING THE RECOUPMENT OF MONEYS OWED TO A UNIT OWNERS' ASSOCIATION DUE TO NONPAYMENT OF ASSESSMENTS.***

#### **SUMMARY:**

The Common Interest Ownership Act (CIOA) currently gives common interest community associations seeking to collect unpaid common charges a six-month priority lien over previously recorded security interests (e.g., mortgages). This bill makes several changes affecting this priority lien. It:

1. extends the period covered by the lien from six to nine months;
2. specifies that the lien applies in all actions the mortgage holder brings to foreclose its mortgage on the unit as well as all actions the association brings to foreclose its lien for unpaid common charges (presumably, this allows the association to invoke the priority lien more than once, if assessments continue to go unpaid — i.e., it is an "evergreen" priority lien);
3. excludes from the lien any late fees, interest, or fines that the association assesses against the unit's owner during the nine-month period;
4. specifies that the lien only includes reasonable attorneys' fees;
5. requires an association, before bringing an action to foreclose its lien, to provide mortgage holders with (a) 60 days' notice setting forth specified information and (b) a copy of the demand for payment it must already send to the unit owner; and
6. provides that if the association fails to provide the required notice, its nine-month priority lien does not include costs or attorneys' fees.

The bill specifies that CIOA's provisions concerning the priority of association liens (in regard to all other liens and encumbrances, not just mortgages) apply despite contrary provisions in the association's declaration or bylaws (see BACKGROUND).

It also provides that association assessments under CIOA and related attorneys' fees and costs owed by a mortgagor (i.e., the borrower) and paid by a mortgagee, become part of the debt the mortgagor owes to the mortgagee or lienor.

\*House Amendment "A":

1. adds the provision on assessments and related fees and costs paid by mortgagees being included within the mortgage debt,
2. adds the requirement that the association send the demand for payment to mortgage holders before bringing an action to foreclose its lien,
3. adds to the required information the association must provide in its notice to mortgage holders,
4. changes the effective date, and
5. makes minor and technical changes.

EFFECTIVE DATE: The priority lien provisions are effective upon passage and apply to actions pending on or filed on or after that date, except the notice requirements are effective October 1, 2013 and apply to actions filed on or after that date; the mortgage debt provision is effective October 1, 2013.

**DEMAND FOR PAYMENT AND NOTICE TO MORTGAGE HOLDERS**

By law, before an association under CIOA can bring an action to foreclose its lien on a unit for unpaid assessments, it must provide the unit owner with a demand for payment, among other requirements. The bill requires the association to simultaneously provide a copy of this demand to the holders of previously recorded mortgages on the unit.

It also requires associations under CIOA, at least 60 days before bringing an action to foreclose its lien, to provide written notice to such mortgage holders. The notice must be sent by first class mail, and must set forth:

1. the amount of unpaid common expense assessments owed to the association as of the notice date;
2. the amount of attorneys' fees and costs the association incurred in enforcing its lien, as of that date;
3. a statement of the association's intention to foreclose its lien if it is not paid these amounts within 60 days after providing the notice;
4. the association's contact information, including (a) the name of the individual acting on its behalf in the matter and (b) the association's mailing address, telephone number, and email address, if any; and
5. instructions for acceptable means of paying the amounts owed.

The bill specifies that the notice is effective when sent.

If the mortgage holder has brought an action to foreclose its mortgage on the unit, the association must provide the required notice to the attorney appearing in that action on the mortgage holder's behalf. Otherwise, the association can rely on the last-recorded security interest of record to determine the mortgage holder's name and mailing address for purposes of complying with the notice requirement.

If the association fails to provide the notice within the required time frame, the association's costs and attorneys' fees would not be included as part of the nine-month priority lien. Otherwise, the priority lien is not affected.

## **BACKGROUND**

### ***CIOA Liens***

CIOA governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut after December 31, 1983. Some provisions of CIOA, including those concerning statutory liens for assessments, also apply to common interest communities formed before then.

Under CIOA, common interest community associations have a statutory lien on a unit for common charges and other assessments attributable to that unit (CGS § 47-258(a)).

This lien has priority over all other liens and encumbrances on a unit, except for (1) those recorded before the recording of the declaration; (2) liens for real estate taxes and other government assessments or charges; and (3) first or second mortgages recorded before the assessment became delinquent, except for an amount equal to common expense assessments that would have become due during the six months (extended to nine months by the bill) immediately preceding an action to enforce the association's lien or the mortgage (CGS § 47-258(b)).

### ***Related Bill***

HB 6477 (File 219), reported favorably by the Insurance and Real Estate Committee, extends from six to 12 months the priority of common expense assessments over previously recorded mortgages under CIOA.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 0 (04/19/2013)